

ZENITH S. MERRITT

IBLA 79-454

Decided February 20, 1980

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM 36322 and NM 37327.

Affirmed in part, reversed in part.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases:
First-Qualified Applicant -- Oil and Gas Leases: Rentals

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the right of the next drawee to receive first consideration attaches eo instante.

APPEARANCES: W. F. Drew, Esq., Brown, Drew, Apostolos, Massey & Sullivan, Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Zenith S. Merritt appeals from the May 3, 1979, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting his oil and gas lease offers NM 36322 and NM 37327. Appellant's drawing entry cards were first drawn for parcels 486 and 491 in the March 13, 1979, simultaneous oil and gas lease drawing.

The rental notices for the two leases were received by appellant on March 27, 1979, 1/ making the rent due on or before April 11,

1/ In the statement of reasons appellant states that one notice was received March 27, and the other on March 28. The return receipts for the notices are both dated and stamped March 27, 1979.

1979. The rental for parcel NM 486 was \$1,600 and for NM 491 was \$1,240, totalling \$2,840. Appellant's secretary mistakenly transposed the figures and a check for \$2,480 was received by BLM on April 10, 1979. The check was \$360 less than the amount required.

On April 10, 1979, an employee of BLM telephoned appellant, advising of the shortage and asking which lease should be paid in full. Appellant instructed the employee to apply \$1,600 to parcel NM 486, and the balance of \$880 to parcel NM 491. Appellant immediately transmitted a check for \$360 for parcel NM 491 which BLM received April 12, 1979. BLM disqualified the lease offers because payment in full was one day late and "this office is not responsible in the way the rental money should be divided."

On appeal appellant asserts that it is inequitable to reject both lease offers "because of a transposition mistake in the check." He states that he understood he would receive both leases if he immediately sent the amount owing. He points out that an employee of BLM originally was going to apply \$1,600 as full payment to parcel NM 486, and he should at least receive a lease for this parcel.

[1] Regulation 43 CFR 3112.4-1 provides:

Rental must be received in the proper office * * * within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

The disqualification is automatic and affords no latitude for any exercise of discretion. The regulation advances the priority of the next drawee and precludes the application of 43 CFR 1821.2-2(g) because the rights of a third party have intervened. Donald E. Jordan, 35 IBLA 290 (1978); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. filed Mar. 25, 1975), wherein the court held the regulation 43 CFR 3112.4-1 is mandatory and allows no consideration of excuses for late payment.

In the instant case, appellant's timely remittance was insufficient to satisfy both rentals. The fact that the deficiency was obviously due to inadvertence on the part of appellant's employee cannot help appellant under the regulation. See Milton Knoll, 38 IBLA 319 (1978); Charles M. Brady, 33 IBLA 375 (1978). However, a BLM cashier noticed the error and called appellant for clarification and instructions. The decision of the State Office is correct in stating BLM has no obligation to resolve such ambiguities. Nevertheless, an employee did inquire and received instructions from appellant to apply the full rental amount to parcel 486. The record shows that this was done, and

only the remittance for parcel NM 491 was actually deficient. It is unnecessarily harsh, on these facts, to deny appellant the lease for parcel NM 486. Therefore, all else being regular, appellant should have been issued the lease for parcel NM 486. The rejection of the lease offer for parcel NM 491 must stand under the regulation and decisions cited above.

Accordingly, pursuant to the authority delegated the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed in part and reversed in part and remanded for appropriate action.

Joan B. Thompson
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

